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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/737,306 | 12/16/2003 | Robert Haines Turner | 9134R2 | 5964 |
| 27752 7590 12/15/2008 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202 | | | | |
| EXAMINER JOHNSON, JENNA LEIGH | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/737,306

Applicant(s)

TURNER ET AL.

Examiner

Jenna-Leigh Johnson

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 4, 11-16 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 11-16, 21, 22, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 23 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on September 12, 2008, has been entered. Claims 1, 2, 5 - 10, and 17 - 20 have been cancelled. Claims 21 - 26 have been added. Therefore, the pending claims are 3, 4, 11 - 16, and 21 - 26.

Claim Rejections - 35 USC § 102/103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 3, 4, 11 - 13, 16, 21, 22, 24, and 25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cree (5,792,404).

The features of Cree et al. have been set forth in the previous Office Action. Claims 23, 4, 11 - 13, and 16 are rejected for the reasons of record. The raised projections taught by Cree et al. are considered to be tufted fibers as described in the present application. Further, the projections are considered to be looped fibers based on the applicant's own definition of looped fibers which states that the fibers begin and end in the base fabric (specification, page 8, lines 6 - 7). Further, the web is designed for use as a topsheet layer in an absorbent article comprising a topsheet, absorbent layer, and a backsheet (column 3, lines 62 - 66). Thus, claims 21, 22, and 25 are anticipated.

Further, the claimed change in diameter in the raised portions is taught by the applicant to be a result of embossing the projections into the base fabric. Therefore, since Cree et al. teaches embossing a similar bas web using similar rollers with a male and female intergaging set-up, then the raised portions of Cree et al. would also have fibers stretched to some degree by the process of embossing the pattern into the surface of the fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed fiber diameter would obviously have been provided by the process disclosed by Cree et al. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the

providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claim 24 is anticipated.

Claim Rejections - 35 USC § 103

4. Claims 14 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cree et al. for the reasons of record.

Response to Arguments

5. Applicant's arguments filed September 12, 2008 have been fully considered but they are not persuasive. The applicant argues that the rejection did not meet the burden of establishing that the claimed broken fibers would be inherent to the invention of Cree et al., because the examiner did not provide a basis in fact and/or technical reasoning to reasonable support the determination of inherency. As set forth in the previous rejection, Cree et al. teaches using a similarly shaped set of interengaging rollers that are used to embossed raised regions into the base web, to create projections. Further, Cree et al. uses the same types of fabrics. And the Applicant admits that the broken fibers are a result of the forcing the fibers out of the plane of the fabric to produce the discontinuity, which is also clearly taught by Cree et al. to create the projections in the prior art product. Therefore, Cree et al. teaches using similar roller structures in a similar process to create projections in a flat web. As set forth in MPEP § 2112, a showing that a product has a similar structure as the claimed product, or is made by a similar process as the claimed product is sufficient technical reasoning to support the determination of inherency. Further, it is noted that when the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Thus, the burden has shifted to the Applicant to provide evidence that the properties are not inherent in the prior art materials. *In re Best*, 562 F.2d at 1255, 195 USPQ at 433. The applicant has not shown that the process or apparatus used by the prior art

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are sufficiently different such that it creates a different end-product from the claimed invention.

Therefore, the rejections are maintained.

Allowable Subject Matter

6. Claim 23 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

8. The prior art fails to teach or fairly suggest a tufted fibrous web comprising substantially randomly-oriented fibers, comprising a first region and a plurality of discrete second regions, each of the second regions having at least a discontinuity portion and a deformation portion, wherein the deformation portion comprises fibers integral with but extending from the first regions and fibers broken from and not extending from the first regions and the deformation comprises looped, aligned fibers forming tunnel shaped deformations. For purposes of examining, the term “tunnel shaped” is examined based on the description in the disclosure (Figure 3, page 9, lines 15 - 25. and page 12, lines 8 - 22), as a raised region that includes fibers that are aligned to create open void areas, with two openings on the ends, and the center of the tuft is open to create a pathway between the open ends, as opposed to a raised region with continuous walls.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

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shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj
December 10, 2008

/Jenna-Leigh Johnson/
Primary Examiner, Art Unit 1794